

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 4183

CASEY THONGSAY
312 Golden Rain Avenue
Fremont, CA 94538

Pharmacy Technician License No. TCH 91694

Respondent.

DECISION AND ORDER

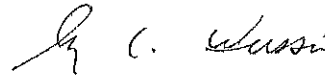
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 1, 2013.

It is so ORDERED on February 28, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CASEY TED THONGSAY,

Pharmacy Technician Registration No. TCH
91694

Respondent.

Case No. 4183

OAH No. 2012110157

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on December 27, 2012, in Oakland, California.

Deputy Attorney General Shana A. Bagley represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Casey Ted Thongsay appeared and represented himself.

The record closed and the matter was submitted on December 27, 2012.

FACTUAL FINDINGS

1. On June 24, 2009 the Board of Pharmacy (board) issued Pharmacy Technician Registration number TCH 91694 to respondent Casey Ted Thongsay. The registration was in full force and effect at all times relevant to the matters alleged in the accusation and will expire on May 31, 2013, unless renewed.

2. On March 9, 2012, complainant Virginia K. Herold, acting in her official capacity as Executive Director of the board, issued the accusation against respondent. The accusation alleges that respondent has been convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician, and that he has engaged in conduct involving moral turpitude, dishonesty, or corruption. Respondent filed a notice of defense.

Criminal conviction

3. On May 13, 2011, respondent was convicted on his plea of nolo contendere of a misdemeanor violation of Penal Code sections 484/487, subdivision (b)(3) (grand theft by an employee). Imposition of sentence was suspended and respondent was placed on court probation for one year, on the conditions that he pay fines, fees and restitution, and serve 15 days in jail (with credit for time served) through a weekend work program.

4. The facts and circumstances leading to this offense are that between December 2010 and January 2011, while respondent was working as an employee at Macy's, he used a customer account number to fraudulently obtain over \$1,000 from Macy's. Respondent devised an elaborate plan in which he used the customer's account number to purchase merchandise and return it in exchange for a high value Macy's gift card; respondent then split the high value gift card into cards of smaller value, which were used to purchase merchandise or returned for a cash refund. Respondent enlisted two acquaintances to help him carry out the plan. A loss prevention officer for Macy's discovered respondent's activities and took him into custody on January 17, 2011. When the police responded to the store that day, they interviewed respondent and he admitted what he had done.

Respondent's evidence

5. Respondent is 25 years old. He is single. Respondent lives with his aunt, who provides him with room and board. Respondent is a high school graduate and has almost two years of community college credits.

6. At hearing, respondent testified that he was unhappy with his pay at Macy's and disappointed that he had not been promoted. These circumstances, he stated, led him to an "immature decision to make a quick buck." He understands that what he did was wrong and regrets it every day.

7. Respondent has satisfied the terms of his criminal probation, including the payment of restitution to Macy's and the performance of community service. Respondent states that he was released from probation in July 2012.

8. Respondent testified that he has learned from his mistake and has, in his words, "straightened up." He goes to temple every week, and provides financial support for his mother, who is disabled and lives alone in the Sacramento valley. Respondent has been working diligently as a pharmacy technician for Walgreens. He started as a part-time employee who floated between different stores. In August 2012, he completed a pharmacy technician certification program that was required by his employer. Since then, he has been working consistently on a full-time basis, and making himself available to work overtime. Respondent's pharmacy technician license is very important to him; without it, he will not be able to meet his own financial goals or provide for his family. Respondent is remorseful for his crime, and he apologizes to the board.

9. In his job at Walgreens, respondent works in the back with the pharmacist, typing prescriptions, performing inventory checks, and ordering. He also performs clerk-cashier duties, which gives him access to customer credit card information.

Costs

10. The board has incurred costs of \$3,002.50 in its investigation and enforcement of this case. These costs are supported by a declaration that complies with the requirements of section 1042 of title 1 of the California Code of Regulations. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

First cause for discipline

1. The board may take disciplinary action against a pharmacy technician registration if the licensee has committed "unprofessional conduct." (Bus. & Prof. Code, § 4301.¹) The term "unprofessional conduct" includes the conviction of a crime that is substantially related to the qualifications, functions and duties of a technician. (§ 4301, subd. (l).) Section 490 also authorizes the board to suspend or revoke a registration if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed activity. A crime is substantially related "if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.) Respondent's conviction of a violation of Penal Code sections 484/487, subdivision (b)(3), is substantially related to the qualifications, functions or duties of a pharmacy technician. Cause exists, therefore, to take disciplinary action against respondent's registration by reason of the matters set forth in Finding 3.

Second cause for discipline

2. The term "unprofessional conduct" includes the "commission of any act involving moral turpitude, dishonesty, fraud, deceit or corruption" (§ 4301, subd. (f).) Cause exists under these provisions to take disciplinary action against respondent's registration by reason of the matters set forth in Finding 4.

Disciplinary considerations

3. It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his criminal offenses so that it would not be contrary to the public interest to allow him to retain his pharmacy technician registration. The board has published disciplinary

¹ All statutory references are to the Business and Professions Code, unless otherwise noted.

guidelines to assist in evaluating a licensee's rehabilitation. Among the factors the board considers are the licensee's overall criminal record; the nature and severity of his offense; whether his offense resulted in actual harm to the public; whether the licensee realized any financial benefit from his offense; whether the licensee complied with the terms of his criminal sentence; the time that has passed since the offenses; and whether the licensee's conviction has been dismissed. The board places great weight on recent, dated statements from a licensee's supervisors, who know him and can speak to the strength of his rehabilitation.

This is respondent's only criminal offense. He has completed his criminal probation and made restitution as required by the terms of his probation, and his expressions of remorse appear to be sincere. Evidence of rehabilitation, however, must be measured against the seriousness of the crime; the more serious the crime, the stronger the showing of rehabilitation must be. Respondent used customer account information for personal gain and, in so doing, abused his employer's trust. This crime bears closely and directly upon respondent's fitness as a pharmacy technician and therefore demands a very strong showing of rehabilitation. Respondent has not made such a showing. There has been little time for respondent to demonstrate that, despite his offense, he is honest and trustworthy: his crime is recent and it has been just six months since he completed his criminal probation. Moreover, while respondent has been working as a pharmacy technician for the past year or so, there is no evidence from supervisors who are aware of his criminal offense, and who can speak to his rehabilitative efforts. Respondent is encouraged to continue on the positive path he has set for himself. At this time, however, it would be contrary to the public interest to allow respondent to retain his pharmacy technician registration.

Cost recovery

4. Section 125.3 provides that a licensee found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 10, complainant's reasonable costs are \$3,002.50.

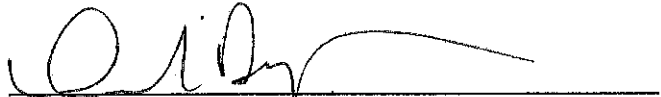
5. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Applied to the facts in this case, none of these factors support a reduction in the board's costs.

ORDER

1. Pharmacy Technician Registration number TCH 91694, issued to respondent Casey Ted Thongsay, is revoked. Respondent shall relinquish his technician license to the board within ten days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of his revoked technician license for three years from the effective date of this decision. A condition of reinstatement shall be that respondent is certified, as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the board.

2. As a condition precedent to reinstatement of his revoked technician license respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$3,002.50. Said amount shall be paid in full prior to the reapplication or reinstatement of his revoked technician license, unless otherwise ordered by the board.

DATED: January 15, 2013



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4183

12 **CASEY TED THONGSAY**
13 **312 Golden Rain Avenue**
Fremont, CA 94539

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **91694**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about June 24, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 91694 to Casey Ted Thongsay (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought in
24 this Accusation and will expire on May 31, 2013, unless renewed.

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26 ///

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

7. Code section 4300 states, in part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

1 (3) Suspending his or her right to practice for a period not exceeding one year.

2 (4) Revoking his or her license.

3 (5) Taking any other action in relation to disciplining him or her as the board in
4 its discretion may deem proper. . . .

5 8. Code section 4301 states, in part:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
9 not limited to, any of the following:

10 . . .

11 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
12 deceit, or corruption, whether the act is committed in the course of relations as a
13 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

14 . . .

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. . . . [T]he record of conviction
17 shall be conclusive evidence only of the fact that the conviction occurred. The board
18 may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled
20 substances or dangerous drugs, to determine if the conviction is of an offense
21 substantially related to the qualifications, functions, and duties of a licensee under this
22 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere is deemed to be a conviction within the meaning of this provision. The
24 board may take action when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under
27 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
28 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

...

23 REGULATORY PROVISION

24 9. California Code of Regulations, title 16, section 1770, states:

25 For the purpose of denial, suspension, or revocation of a personal or facility
26 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
27 Professions Code, a crime or act shall be considered substantially related to the
28 qualifications, functions or duties of a licensee or registrant if to a substantial degree
it evidences present or potential unfitness of a licensee or registrant to perform the

functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

10. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Substantially Related Conviction) (Bus. & Prof. Code §§ 490 and 4301, subd. (I))

11. Respondent's registration is subject to discipline for unprofessional conduct under Code sections 490 and 4301, subdivision (I), in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician, as defined in Title 16, California Code of Regulations, section 1770, as follows:

a. On or about May 13, 2011, in a prior criminal proceeding entitled *People v. Casey Ted Thongsay* in Santa Clara County Superior Court, Case Number C1101117, Respondent was convicted of violating Penal Code section 484-487, subdivision (b)(3), (Grand Theft by Employee), a misdemeanor. Respondent was ordered to serve 15 days in county jail, complete one year of informal probation, pay fines and restitution, and to comply with other terms and conditions. The record of the criminal proceeding is incorporated as if fully set forth.

b. The factual circumstances underlying the conviction are that on or about December 27, 2010, and January 11, 2011, Respondent, while an employee of Macy's Department Store, fraudulently used a customer's store credit account to purchase merchandise and then returned the merchandise in exchange for Macy's gift cards for \$971.23. Respondent and others used some of the gift cards to purchase merchandise and exchanged some gift cards for cash. Respondent admitted this conduct to the arresting officer.

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SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct: Commission of Acts of Dishonesty)
(Bus. & Prof. Code § 4301, subd. (f))**

12. Respondent's registration is subject to discipline for unprofessional conduct under Code section 4301, subdivision (f), for committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in Paragraph 11 and its subparts, above.

PRAYER

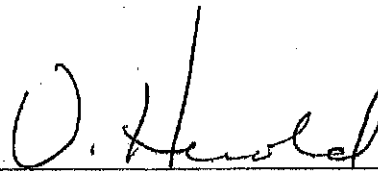
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 91694, issued to Casey Ted Thongsay;

2. Ordering Casey Ted Thongsay to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/19/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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